

United States 7
Circuit Court of Appeals
For the Ninth Circuit.

SKAGIT COUNTY, a Public Corporation of the
State of Washington,

Plaintiff in Error,

vs.

PUGET MILL COMPANY, a Corporation,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of
the Western District of Washington, Northern Division.

FILED

DEC 7 - 1917

F. D. MONCKTON,
CLERK

United States
Circuit Court of Appeals
For the Ninth Circuit.

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vs.
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Counsel.

A. R. HILEN, Esq., Attorney for Defendant and Plaintiff in Error, Mount Vernon, Washington.

THOMAS SMITH, Esq., Attorney for Defendant and Plaintiff in Error, Mount Vernon, Washington.

HUGHES, McMICKEN, RAMSEY & RUPP, Attorneys for Plaintiff and Defendant in Error, 661 Colman Building, Seattle, Washington.

PALMER & ASKREN, Attorneys for Plaintiff and Defendant in Error, 631 Lyon Building, Seattle, Washington. [1*]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3467.

PUGET MILL COMPANY, a Corporation,
Plaintiff,

vs.

SKAGIT COUNTY, a Public Corporation of the State of Washington,
Defendant.

Complaint.

Comes now the plaintiff and for cause of action against the defendant complains and alleges:

I.

That the Puget Mill Company is a corporation duly organized and existing under and by virtue of the

*Page-number appearing at foot of page of original certified Transcript of Record.

laws of the State of California, with its principal place of business in the City of San Francisco, in said State of California, and is a citizen and resident of said State; that it has fully complied with the laws of the State of Washington relating to foreign corporations and has paid all license fees and dues required by the State of Washington from corporations doing business in said State, and that it is duly authorized to do business in said State of Washington.

II.

That at all times herein mentioned Skagit County was and now is a public corporation of the State of Washington, duly organized and existing as a County of the State of [2] Washington, and located in the Northern Division of the Western District of Washington and is a citizen and resident of said State of Washington.

III.

That at all times herein mentioned the plaintiff herein was the owner of certain tracts of timber land situated in Townships 34 and 35 North of Ranges 4 and 5 East of the Willamette Meridian, in Skagit County, State of Washington; a more particular description of which said lands, and all thereof, is hereto attached, marked Exhibit "A" and by this reference made a part of this complaint; that the lands described in said Exhibit "A" were duly and regularly listed and assessed in the year 1915 by the proper official of said Skagit County for the purposes of assessment and taxation for the support of the State government and for county and school and

such other purposes as are designated by law; that said lands were valued for the said purposes of assessment and taxation in the amounts set opposite each of said subdivisions of said lands described in said Exhibit "A"; that the value of all of said lands described in said Exhibit "A" were for the purposes of assessment and taxation, the sum of \$131,745.00, and that the County Assessor of said Skagit County duly certified said sum of \$131,745.00 as the value of said lands for the purposes of assessment and taxation to the Board of Equalization of said Skagit County for the year 1915.

IV.

That thereafter the Board of Equalization of said Skagit County for the year 1915, arbitrarily, wrongfully, and without authority or right, and without serving or giving any [3] notice thereof whatsoever to this plaintiff other than the notice hereto attached, marked Exhibit "B" and by this reference made a part hereof, raised the assessed valuation of plaintiff's said timber lands described in said Exhibit "A" from the amounts set opposite each of said subdivisions of said lands in said Exhibit "A" to the amounts set opposite each of said subdivisions of said lands in said Exhibit "A" under the heading "Valuation, Board of Equalization"; that the increased valuation so arbitrarily, wrongfully and unlawfully placed upon said lands was and is the sum of \$134,253.00.

V.

That the said Board of Equalization exceeded its authority, power and jurisdiction in so raising the

assessed valuation of the said lands belonging to this plaintiff; that the said raising of the assessed valuation of the plaintiff's said lands was and is in violation of subdivision 1 of Article XIV Amendatory of the Constitution of the United States, in that it deprives this plaintiff of its property without due process of law, and that the order of the said Board of Equalization raising the said assessed valuation of said property was and is void.

VI.

That thereafter the tax-rolls were extended and levies were made upon the lands of this plaintiff, described in said Exhibit "A" upon the unlawfully and wrongfully fixed valuation of said lands in the sum of \$265,998.00; that the tax so levied as aforesaid on said lands amounted to \$14,456.25, of which said amount \$7,313.86 was and is excessive and void, for the reasons hereinbefore shown; and that the lands, and each subdivision [4] thereof, described in said Exhibit "A," were thereby subjected to a tax lien based upon the increased valuation so wrongfully and unlawfully made by said Board of Equalization.

VII.

That on the first day of June, 1916, said tax so wrongfully and unlawfully assessed upon said lands and each subdivision thereof became delinquent, and thereupon said lands and each subdivision thereof were subject to a lien for penalties, interest and costs, and to the issuance of certificates of delinquency, thereby creating a cloud upon the title to each subdivision of said lands.

VIII.

That on the first day of June, 1916, after said tax became delinquent, and said lands and each subdivision thereof were subject to a lien for penalties, interest and costs, and to the issuance of certificates of delinquency, said plaintiff in order to protect its title and to remove the cloud on its title to lands and each subdivision thereof created by reason of said tax, wrongfully and unlawfully levied as aforesaid, paid, under protest, to said Skagit County, the sum of \$14,456.25, of which said sum \$7,313.86 was in excess of the sum lawfully due as taxes on said lands for the year 1915.

IX.

That thereafter this plaintiff duly presented its claim to said Skagit County, for repayment of said sum of \$7,313.86 which said claim and the whole thereof was on August 7, 1916, by said defendant disallowed and rejected. [5]

WHEREFORE, this plaintiff prays for judgment against said defendant in the sum of \$7,313.86, together with interest thereon from June 1, 1916, at 6% per annum and disbursements herein.

HUGHES, McMICKEN, DOVELL & RAMSEY,

PALMER & ASKREN,

Attorneys for Plaintiff.

State of Washington,
County of King,—ss.

E. G. Ames, being first duly sworn, says that he is managing agent for Puget Mill Company, a corporation, plaintiff in the above-entitled action; that he

has read the foregoing complaint and that the allegations in said complaint are true of his own knowledge, except such as are stated on information and belief, and as to such matters he believes them to be true.

E. G. AMES.

[Seal]

F. M. OSTERHOUT,

Notary Public in and for the State of Washington,
Residing at Seattle.

11/21/1916. [6]

Exhibit "A" to Complaint.

			Valuation Returned by Assessor.	Valuation Fixed by Board.
Twp. 34, N. R. 4, E. W. M.				
NE.1/4 of SE.1/4	Sec. 22		\$1730	\$3800
NW.1/4 of SE.1/4	Sec. 22		1005	2300
SE.1/4 of SE.1/4	Sec. 22		2020	4450
SW.1/4 of SE.1/4	Sec. 22		1240	3550
NE.1/4 of NE.1/4	Sec. 27		\$1085	\$2480
NW.1/4 of NE.1/4	Sec. 27		1085	2460
SE.1/4 of NE.1/4	Sec. 27		1140	2850
SW.1/4 of NE.1/4	Sec. 27		1140	2550
NE.1/4 of NW.1/4	Sec. 27		995	2740
NW.1/4 of NW.1/4	Sec. 27		995	1640
SE.1/4 of NW.1/4	Sec. 27		770	2440
SW.1/4 of NW.1/4	Sec. 27		770	880
NE.1/4 of SE.1/4	Sec. 28		\$ 705	\$2060
SE.1/4 of SE.1/4	Sec. 28		565	1560
SW.1/4 of SE.1/4	Sec. 28		500	1000
NW.1/4 of SE.1/4	Sec. 28		700	1080
TWP. 35, N.R. 4, E.W.M.				
Lot 1	Sec. 1		\$ 825	\$1775

Puget Mill Company.

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Twp. 35, N. R. 4, E. W. M.

			Valuation Returned by Assessor.	Valuation Fixed by Board.
Lot 2	Sec. 1		1390	2750
Lot 3	Sec. 1		1300	2650
Lot 4	Sec. 1		1610	2950
[7]				
S.1/2 of NE.1/4	Sec. 1		\$4335	\$7875
S.1/2 of NW.1/4	Sec. 1		3795	6800
N.1/2 of SE.1/4	Sec. 1		2275	4800
N.1/2 of SW.1/4	Sec. 1		1775	3650
Lot 1	Sec. 2		\$1535	\$2880
S.1/2 of NE.1/4	Sec. 2		2425	4502
SE.1/4 of NW.1/4	Sec. 2		1505	2970
N.1/2 of SE.1/4	Sec. 2		2700	5041
S.1/2 of SE.1/4	Sec. 2		3795	6593
N.1/2 of SW.1/4	Sec. 2		2940	5357
S.1/2 of SW.1/4	Sec. 2		2200	3984
NE.1/4 of NE.1/4	Sec. 10		\$ 825	\$1650
S.1/2 of NE.1/4	Sec. 10		1655	3610
N.1/2 of SE.1/4	Sec. 10		1585	3365
S.1/2 of SE.1/4	Sec. 10		1915	4000
N.1/2 of NE.1/4	Sec. 11		\$3360	\$6380
S.1/2 of NE.1/4	Sec. 11		3105	6180
N.1/2 of NW.1/4	Sec. 11		5100	9270
S.1/2 of NW.1/4	Sec. 11		3940	8226
N.1/2 of SE.1/4	Sec. 11		3050	6165
S.1/2 of SE.1/4	Sec. 11		2495	5570
N.1/2 of SW.1/4	Sec. 11		4280	8855
S.1/2 of SW.1/4	Sec. 11		3965	8380

[8]

		Valuation Returned by Assessor.	Valuation Fixed by Board.
Twp. 35, N. R. 4, E. W. M.			
SW.1/4 of NW1/4	Sec. 12	\$1090	\$3050
N.1/2 of SW1/4	Sec. 12	3095	7275
S.1/2 of SW.1/4	Sec. 12	2715	6500
NW.1/4 of NE.1/4	Sec. 13	\$1515	\$3475
S.1/2 of NE.1/4	Sec. 13	2365	5625
N.1/2 of NW.1/4	Sec. 13	3365	7775
S.1/2 of NW1/4	Sec. 13	1775	4550
TWP. 35 N., R. 5 E., W. M.			
Lot 2	Sec. 6	\$1675	\$2580
SW.1/4 of NE.1/4	Sec. 6	1025	1570
Lot 3	Sec. 6	1475	2510
SE.1/4 of NW.1/4	Sec. 6	2165	3210
Lot 5	Sec. 6	2905	4280
NW.1/4 of SE.1/4	Sec. 6	950	1445
NE.1/4 of S.W.1/4	Sec. 6	1925	2800
Lot 6	Sec. 6	2125	3200
TWP. 35 N., R. 4 E., W. M.			
NE.1/4 N. of ditch	Sec. 15	\$2600	\$5525
N.1/2 of NE.1/4	Sec. 14	3005	6190
S.1/2 of NE.1/4	Sec. 14	2325	5140
N.1/2 of NW.1/4	Sec. 14	4275	8680
S.1/2 of NW.1/4	Sec. 14	3250	6550
[9]			

Exhibit "B" to Complaint.

BOARD OF EQUALIZATION.

Skagit County, Washington.

Mt. Vernon, Washington, July 3, 1915.

Puget Mill Company,

Seattle, Washington.

Gentlemen:

You are hereby notified to be and appear before the Board of Equalization of Skagit County, Washington, and show cause, if any you have, why the assessed valuation on the property, as per annexed schedule, shall not be raised from the items marked "present valuation" in said schedule to the items under the title "raised to" in said schedule. And you are hereby notified that if you fail, neglect or refuse to so appear or fail to show good and sufficient cause why said proposed raise should not be made, then the said board will proceed to make such raise in assessed valuation on property as specified in said schedule.

You are further notified that the said Board of Equalization for the year 1915 will be and remain in session in the Commissioners' rooms at the Court-house in Mount Vernon, Skagit County, Washington, between the hours of 9 o'clock in the forenoon and 4 o'clock in the afternoon of each and every Monday, Tuesday and Wednesday during the first three weeks in August, and will also be in session between the same hours as stated, on Saturday, of the third week in August, being the 21st day of said month,

which day will be the last day of said month, which day will be the last day of said session.

Very truly yours,

J. Z. NELSON,

County Assessor and Ex-officio Clerk of the Board
of Equalization of Skagit County, Washington.

[10]

[Indorsed]: Complaint. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Nov. 22, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [11]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 3467.

PUGET MILL COMPANY, a Corporation,
Plaintiff,

vs.

SKAGIT COUNTY, a Public Corporation of the
State of Washington,
Defendant.

Demurrer.

Comes now the defendant by its attorney A. R. Hilén and demurs to the complaint of the plaintiff on file herein on the following grounds:

1. That the Court has no jurisdiction of the person of the defendant or of the subject-matter of the action.

2. That the complaint does not state facts sufficient to constitute a cause of action.

Dated at Mount Vernon, Washington, this 22d day of December, 1916.

A. R. HILEN,
Attorney for Defendant.

THOS. SMITH,
Attorney for Defendant.

Due service of within pleading accepted the 7th day of March, 1917.

HUGHES, McMICKEN, DOVELL &
RAMSEY,
PALMER & ASKREN,

Attorneys for Plaintiff.

[Indorsed]: Demurrer. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Mar. 7, 1917. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [12]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 3467.

PUGET MILL COMPANY, a Corporation,
Plaintiff,

vs.

SKAGIT COUNTY, a Public Corporation of the
State of Washington,

Defendant.

Answer.

Comes now the defendant by its attorneys, A. R. Hilen and Thomas Smith and for answer to the complaint on file herein alleges and avers as follows:

I.

In answer to paragraph I of plaintiff's complaint defendant alleges that it has no knowledge or information of the facts therein contained sufficient to form a belief and therefore denies the same.

II.

In answer to paragraph II defendant admits all of the allegations therein contained.

III.

Answering paragraph III defendant admits the same except that defendant denies that the value of the land therein described was for the purpose of assessment and taxation for the year 1915 the sum of \$131,745, and denies that said sum is the proper amount for which plaintiff should be taxed for said year.

IV.

Answering paragraph IV defendant admits that Exhibit "B" is a true copy of the notice served upon the plaintiff but as to all other matters of fact contained in said paragraph IV defendant denies the same. [13]

V.

Answering paragraph V defendant denies each and every allegation therein contained.

VI.

Answering paragraph VI defendant admits that the tax rolls were extended, the valuation placed on said land in the sum of \$265,998, and the tax levied on said land amounts to the sum of \$13,456.25, but as to all other matters of fact alleged in said para-

graph defendant denies the same.

VII.

Answering paragraph VII defendant denies each and every allegation therein contained.

VIII.

Answering paragraph VIII defendant admits that payment of said tax was made on the 1st day of June, 1916, but denies that said payment was made under proper legal protest and alleges that said payment was a legal voluntary payment of said tax.

IX.

Answering paragraph IX defendant denies that any legal claim was ever presented to said defendant as set forth in said paragraph.

WHEREFORE, having fully answered plaintiff's complaint on file herein defendant prays that it may go hence without day, and for its costs and disbursements herein.

A. R. HILEN,

THOMAS SMITH,

Attorneys for Defendant. [14]

State of Washington,
County of Skagit,—ss.

Will R. Arges, being first duly sworn, upon oath deposes and says: That he is the duly elected, qualified and acting county auditor of defendant Skagit County, a public corporation of the State of Washington, and that as such he is the Ex-officio Clerk of the Board of County Commissioners of said Skagit County; that he has read the foregoing an-

swer, knows the contents thereof, and that the same is true as he verily believes.

WILL R. ARGES,
County Auditor and Ex-officio Clerk of the Board of
County Commissioners of Skagit County, Wash-
ington.

Subscribed and sworn to before me this 22d day
of March, A. D. 1917.

[Seal] A. R. HILEN,
Notary Public in and for the State of Washington,
Residing at Mount Vernon.

Copy of within Answer received and service of
same acknowledged this 22d day of March, 1917.

HUGHES, McMICKEN, DOVELL & RAM-
SEY,
PALMER & ASKREN,

Attorneys for Plaintiff.

[Indorsed]: Answer. Filed in the U. S. District
Court, Western Dist. of Washington, Northern Divi-
sion. Mar. 26, 1917. Frank L. Crosby, Clerk. By
Ed M. Lakin, Deputy. [15]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 3467.

PUGET MILL COMPANY,

Plaintiff,

vs.

SKAGIT COUNTY,

Defendant.

Minutes of Court—May 8, 1917.

Now on this day this cause comes on for trial before the Court, trial by jury having been waived. Hughes, McMicken, Dovell and Ramsey and Palmer & Askren appear for plaintiff; A. R. Hilen, Thos. Smith, Walter Fulton and Norman Johnson appearing for defendant. Witnesses E. B. Palmer and N. M. Wardall are examined on behalf of plaintiff and Plaintiff's Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, and Defendant's Exhibit "A" introduced, at which time the plaintiff rests. The defendant moves for nonsuit, which motion is denied by the Court. Witness J. Z. Nelson is examined on behalf of defendant and Exhibit "B" introduced, at which time defendant rests. Rebuttal Exhibits Nos. 8 and 9 are introduced, whereupon the cause is argued by respective counsel and the Court takes the said matter under advisement.

Dated May 8, 1917.

Journal 6, page 161. [16]

*United States District Court, Western District of
Washington, Northern Division.*

No. 3467.

PUGET MILL COMPANY, a Corporation,
Plaintiff,

vs.

SKAGIT COUNTY, a Public Corporation of the
State of Washington,
Defendant.

Opinion.

Filed May 10, 1917.

DECREE FOR PLAINTIFF.

HUGHES, McMICKEN, DOVELL & RAMSEY, PALMER & ASKREN, for Plaintiff.

A. R. HILEN, Prosecuting Attorney, Mount Vernon, THOMAS SMITH, for Defendant.

NETERER, District Judge:

Plaintiff seeks to recover from the defendant \$7,313.86, together with interest from June 1, 1916. It is alleged that the Board of Equalization of Skagit County, without notice, arbitrarily raised the valuation of lands by plaintiff owned in the county, and taxes were levied upon such valuation, and that the amount sought to be recovered is the amount represented by such unwarranted act on the part of the Equalization Board; that the amount of taxes represented by the valuation returned by the County Assessor was tendered and refused, and on June 1st, when said taxes had become delinquent, for the purpose of preventing the issuance of delinquency certificates, the amount claimed was paid, under protest, however, and that demand for such repayment was duly made thereafter, and refused.

It is conceded that a notice was given to the plaintiff company by the Board of Equalization of Skagit County on the 3d day of August, 1915, which was received by the plaintiff company on the following day. The notice reads, omitting [17] formal parts:

“You are hereby notified to be and appear before the Board of Equalization of Skagit County, Washington, and show cause, if any you have, why the assessed valuation of the property as per annexed schedule shall not be raised from the items marked ‘present valuation’ in said schedule to the items under the title ‘raised to’ in said schedule. And you are hereby notified that if you fail, neglect or refuse to so appear or fail to show good and sufficient cause why said proposed raise should not be made, then the said Board will proceed to make such raise in assessed valuation on property as specified in said schedule.

You are further notified that the said Board of Equalization for the year 1915 will be and remain in session in the Commissioners’ rooms at the Court House in Mount Vernon, Skagit County, Washington, between the hours of 9 o’clock in the forenoon and 4 o’clock in the afternoon of each and every Monday, Tuesday and Wednesday during the first three weeks in August, and will also be in session between the same hours as stated, on Saturday of the third week in August, being the 21st day of said month, which day will be the last day of said month, which day will be the last day of said session.”

Attached to this notice was a description of the property with the returned valuation and the proposed valuation opposite each description.

The section of the Washington Statute under which the Board of Equalization was proceeding, Sec. 9200, Rem. & Bal. Code, subd. 1, provides as follows:

“They shall raise the valuation of each tract or lot of real property which, in their opinion, is returned below its true and fair value, to such price or sum as they believe to be the true and fair value thereof, after at least five days’ notice shall have been given in writing to the owner or agent.”

It is contended that under this section of the statute, as construed by the Supreme Court of the State, the plaintiff was entitled to have a date certain fixed by the notice when the matter would be heard, and *Everett Water Co. v. Fleming*, 26 Wash. 364, is cited as conclusive of the contention. In this case the notice reads, omitting formal parts:

“You are hereby notified to appear before the Board of Equalization within five days after the date of this notice and show cause, if any, why the assessment of your company for the year 1901 should not be raised * * *. Board will be in session from the 19th to the 24th of this month.” [18]

Notice was dated August 16th, and the Supreme Court, at page 367, says:

“It will be observed that the statute provides that this action shall be taken after at least five days’ notice shall have been given to the owner, and the notice calls upon the company to appear

within five days from the date of the notice. So it would seem that in any event the statutory notice without which the valuation cannot be raised, and which is a jurisdictional prerequisite, was not given. It is, however, contended by the appellant that inasmuch as the Board did not act until the 24th of August, fully five days had elapsed between the date of the notice and the action of the Board in raising the assessment. But we think the statute contemplates a notice given to the property holder with a date certain fixed for his appearance, and that date must be fixed more than five days from the service of the notice.”

It is contended on the part of the defendant that the notice in the instant case is distinguishable from the notice in *Everett Water Co. v. Fleming*, *supra*, in that a definite date was named as the 21st, and that the notice merely gave to the owners the option of appearing at any time upon any of the other days.

I think an analysis of the two notices would hardly justify this conclusion, as the 24th being the last day in the *Everett* notice is fully as emphatic as the 21st in the notice in issue. The employment of the term “within five days” in the *Everett* notice was not the determining factor, and no doubt was employed through inadvertence, and if a day and time certain had been fixed for hearing the matter after five days’ notice the term “within” would not have been controlling, as it was not in the decision. There is no legal distinction between the 19th and the 24th

of a month, and the Mondays, Tuesdays and Wednesdays of each week and the 21st or Saturday of the last week, and the Supreme Court of the State having construed this section of the statute, this Court must regard it as a part of *of* the statute and be bound thereby, *Leffingwell v. Warron*, 2d Black, 67 U. S. 599; *Lewis v. Munson*, 151 U. S. 545; *Cargill Co. v. Minnesota*, 160 U. S. 452; *Jacobson v. Massachusetts*, 197 U. S. 11. The protest was sufficient, and if a verified [19] demand was necessary, it was waived.

A decree may be presented in favor of the plaintiff.

JEREMIAH NETERER,

Judge.

[Indorsed]: Opinion. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. May 10, 1917. Frank L. Crosby. By Ed M. Lakin, Deputy. [20]

*In the District Court of the United States for the
Western District of Washington, Northern Division.*

No. 3467.

PUGET MILL COMPANY, a Corporation,
Plaintiff and Defendant in Error,
vs.

SKAGIT COUNTY, a Public Corporation of the
State of Washington,
Defendant and Plaintiff in Error.

Decree.

The above-entitled matter having come regularly on for trial before the above-entitled court on the 8th day of May, 1917, the plaintiff appearing by Hughes, McMicken, Ramsey & Rupp and Palmer & Askren, its attorney, the defendant appearing by Messrs. A. R. Hilen and Thomas Smith, its attorneys, the parties having waived a trial by jury and consented to trial by the Court, the matter proceeded to the introduction of testimony on behalf of the parties hereto until the close thereof, and the cause, having been argued by respective counsel, was taken under advisement by the Court; and, thereafter, on May 10, 1917, the Court having filed herein its written opinion finding in favor of the plaintiff and against the defendant;

It is now hereby ordered, adjudged and decreed that the plaintiff do have and recover of and from the defendant the sum of seven thousand three hundred thirteen and 86/100 dollars (\$7,313.86), with interest on said sum from August 7, 1916, until paid, together with its costs and disbursements herein to be taxed; to all of which the defendant excepts and its exception is allowed.

Done in open court this 24th day of May, 1917.

JEREMIAH NETERER,

Judge.

O.K. as to form.

A. R. HILEN,
Pros. Atty. [21]

[Indorsed]: Decree. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. May 24, 1917. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy, [22]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 3467.

PUGET MILL COMPANY, a Corporation,
Plaintiff and Defendant in Error,
vs.

SKAGIT COUNTY, a Public Corporation of the
State of Washington,
Defendant.

Petition for Writ of Error.

To the Honorable JEREMIAH NETERER:

Comes now Skagit County, a public corporation of the State of Washington, as plaintiff in error, by its attorneys A. R. Hilen and Thomas Smith, and respectfully shows:

That in an opinion filed the 10th day of May, 1917, the Court directed that judgment be entered against your petitioner and in favor of defendant in error, to wit, Puget Mill Company, and in accordance with said opinion a final judgment was entered against your petitioner on the 24th day of May, 1917. Your petitioner feeling itself aggrieved by the said judgment entered thereon as aforesaid, herewith petitions the Court for an order allowing it to prosecute

a writ of error to the Circuit Court of Appeals of the United States for the Ninth Circuit under the laws of the United States, in such case made and provided;

WHEREFORE, premises considered, your petitioner prays that a writ of error do issue, that an appeal in its behalf to the United States Circuit Court of Appeals as aforesaid sitting at San Francisco, in said circuit for the correction of the errors complained of and herewith assigned, be allowed and that an order be made fixing the amount of security to be given by plaintiff in error, conditioned as the law directs, and upon giving such bond [23] as may be required, that all further proceedings may be suspended until the termination of said writ of error by the Circuit Court of Appeals.

A. R. HILEN,

THOMAS SMITH,

Attorneys for Petitioner in Error.

State of Washington,
County of Skagit,—ss.

Will R. Arges, being first duly sworn, upon oath deposes and says: That he is the Auditor of Skagit County; plaintiff in error above named, and ex-officio Clerk of the Board of County Commissioners of said County; that he has read the foregoing petition, knows the contents thereof and believes the same to be true.

WILL R. ARGES.

Subscribed and sworn to before me this 27th day of October, 1917.

[Seal] A. R. HILEN,
Notary Public in and for the State of Washington,
Residing at Mount Vernon.

[Indorsed]: Petition for Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Oct. 29, 1917. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [24]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 3467.

PUGET MILL COMPANY, a Corporation,
vs.

SKAGIT COUNTY, a Public Corporation of the
State of Washington,
Defendant and Plaintiff in Error.

Assignment of Error.

Comes now Skagit County, a public corporation of the State of Washington, in the above numbered and entitled cause and in connection with its petition for a writ of error in this cause, assigns the following errors which plaintiff in error avers occurred on the trial thereof, and upon which it relies to reverse the judgment herein as appears of record:

1. The Court erred in holding that the complaint in the above-entitled cause, stated facts sufficient to constitute a cause of action, and in rendering the

judgment on the evidence adduced supporting the said complaint.

2. The Court erred in holding that the notice to appear before the Board of Equalization of Skagit County, directed to defendant in error and made a part of the complaint of said defendant in error, and designated therein as Plaintiff's Exhibit "B" was insufficient in law, for the reason that no definite time and date of appearance before said Board of Equalization, was contained in said notice, which said notice is in words and figures as follows, to wit: [25]

PLAINTIFF'S EXHIBIT "B."

"BOARD OF EQUALIZATION,

Skagit County, Washington.

Mt. Vernon, Washington, July 3, 1915.

Puget Mill Company,

Seattle, Washington.

Gentlemen:

You are hereby notified to be and appear before the Board of Equalization of Skagit County, Washington, and show cause, if any you have, why the assessed valuation on the property as per annexed schedule shall not be raised from the items marked "present valuation" in said schedule to the items under the title "raised to" in said schedule. And you are hereby notified that if you fail, neglect or refuse to so appear or fail to show good and sufficient cause why said proposed raise should not be made, then the said Board will proceed to make such raise in assessed valuation on property as specified in said schedule.

You are further notified that the said Board of Equalization for the year 1915 will be and remain in session in the Commissioners' rooms at the Court-house in Mount Vernon, Skagit County, Washington, between the hours of 9 o'clock in the forenoon and 4 o'clock in the afternoon of each and every Monday, Tuesday and Wednesday during the first three weeks in August, and will also be in session between the same hours as stated, on Saturday of the third week in August, being the 21st day of said month, which day will be the last day of said month, which day will be the last day of said session.

Very truly yours,

J. Z. NELSON,

County Assessor and Ex-officio Clerk of the Board
of Equalization of Skagit County, Washington.

[26]

3. The Court erred in its judgment, that by reason of the failure to designate a definite date of appearance before the Board of Equalization of Skagit County, on the part of defendant in error as stated in the foregoing second assignment of error, the said Board of Equalization was without jurisdiction to raise the taxes of defendant in error in the amount complained of, or to fix such taxes in any amount greater than that fixed by the assessor of Skagit County, Washington.

4. The Court erred in its judgment that the defendant in error, do have and recover from the plaintiff in error, the sum of \$7,313.86, with interest on said sum from August 7, 1916, or in giving or grant-

ing unto the said defendant in error, judgment for any sum or sums whatsoever.

WHEREFORE, plaintiff in error prays that the judgment of said Court be reversed and judgment entered dismissing the complaint of the defendant in error and giving and granting unto the plaintiff in error its costs and disbursements herein.

Dated October 29, 1917.

A. R. HILEN,
THOMAS SMITH,

Attorneys for Plaintiff in Error.

[Endorsed]: Assignment of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Oct. 29, 1917. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [27]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 3467.

PUGET MILL COMPANY, a Corporation,
Plaintiff and Defendant in Error,

vs.

SKAGIT COUNTY, a Public Corporation of the
State of Washington,
Defendant and Plaintiff in Error.

Order Granting Writ of Error.

The plaintiff in error above named, to wit, Skagit County, a public corporation of the State of Washington, having on the 29th day of October, A. D.

1917, filed and presented to this Court its petition in writing praying for the allowance of a writ of error intended to be urged by defendant, be issued out of this Court, and that such other and further proceeding may be had in the premises as may be just and proper; and upon consideration of the said petition this court desires to give petitioner an opportunity to test in the United States Circuit Court of Appeals for the Ninth Circuit, the questions herein presented;

IT IS HERE NOW BY THIS COURT ORDERED, That a writ of error be allowed as prayed, provided however, that said Skagit County as plaintiff in error give bond according to law in the sum of Ten Thousand Dollars, which said bond shall operate as a *supersedeas* bond.

In testimony whereof, witness my hand this 29th day of October, A. D. 1917.

JEREMIAH NETERER,

Judge of the District Court of the United States,
Western District of Washington, Northern Division.

[Endorsed]: Order Granting Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Oct, 29, 1917. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [28]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 3467.

PUGET MILL COMPANY, a Corporation,
Plaintiff and Defendant in Error,
vs.

SKAGIT COUNTY, a Public Corporation of the
State of Washington,
Defendant.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS, That we, Skagit County, a Public Corporation of the State of Washington, as principal, and American Surety Company of New York, a corporation, as surety, are held and firmly bound unto Puget Mill Company, a corporation, in the full and just sum of Ten Thousand Dollars to be paid to the said Puget Mill Company, a corporation, its attorneys, successors, administrators, executors, or assigns, to which payment well and truly to be made we bind ourselves, our successors, assigns, executors and administrators, jointly and severally by these presents.

Signed and dated this the 29th day of October, A. D. 1917.

Whereas lately at a regular term of the District Court of the United States for the Western District of Washington, Northern Division, sitting at Seattle, in said District, in a suit pending in said court between Puget Mill Company, a corporation, as plaintiff, and Skagit County, a public corporation of the

State of Washington, as defendant, cause No. 3467, on the law docket of said court final judgment was rendered against the said Skagit County, a public corporation of the State of Washington, for the sum of Seven Thousand Three Hundred Thirteen Dollars Eighty-six cents (\$7,313.86), with interest thereon at [29] the rate of six per centum per annum, and the said Skagit County, a public corporation of the State of Washington, has obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment of the said court in the aforesaid suit, and a Citation directed to the said Puget Mill Company, a corporation, defendant in error, citing it to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit to be holden at ———, in the State of ———, according to law within thirty days (30) from the date hereof.

Now, the condition of the above obligation is such that if the said Skagit County, a public corporation of the State of Washington, shall prosecute its writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

[Seal]

SKAGIT COUNTY, a Public Corporation of
the State of Washington.

By E. A. SISSON,
Chairman.

S. M. BUTLER.
County Commissioners.

County Commissioners.

Attest: WILL R. ARGES,
County Auditor and Ex-officio Clerk of the Board
of County Commissioners of Skagit County,
Washington.

AMERICAN SURETY COMPANY OF
NEW YORK, a Corporation.

[Seal] By N. B. HANNAN,
Its Attorney in fact.

Approved this the 29th day of October, A. D. 1917.

JEREMIAH NETERER,
Judge.

[Indorsed]: Bond. Filed in the U. S. District
Court, Western Dist. of Washington, Northern Di-
vision. Oct. 29, 1917. Frank L. Crosby, Clerk.
By Ed M. Lakin, Deputy. [30]

*United States District Court, Western District of
Washington, Northern Division.*

No. 3467.

PUGET MILL COMPANY, a Corporation,
Plaintiff and Defendant in Error,
vs.

SKAGIT COUNTY, a Public Corporation of the
State of Washington,
Defendant and Plaintiff in Error.

Praeceptum for Transcript of Record.

To the Clerk of the Above-entitled Court:

You will please issue for the use of the parties
herein, on appeal to the Circuit Court of Appeals,

a transcript of the following pleadings and files in said cause:

- I. Complaint.
- II. Demurrer.
- III. ~~Order overruling Demurrer.~~
- IV. Answer.
- V. ~~Reply.~~
- VI. Stipulation Waiving Jury.
- VII. Opinion of the Court.
- VIII. Decree.
- IX. Petition for Writ of Error. [31]
- X. Assignment of Error.
- XI. Order Granting Writ of Error and Fixing Bond.
- XII. Bond of Plaintiffs in Error.
- XIII. Writ of Error.
- XIV. Citation on Writ of Error.
- XV. Proof of service of petition for Writ of Error; Assignment of Error; Order Allowing Writ of Error; Bond on Appeal; Writ of Error; Citation on Writ of Error.

Dated October 29, 1917.

A. R. HILEN,
THOMAS SMITH,
Attorneys for Plaintiff in Error.

[Indorsed]: Praeceptum. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Oct. 29, 1917. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [32]

*In the District Court of the United States for
the Western District of Washington, Northern
Division.*

No. 3467.

PUGET MILL COMPANY, a Corporation,
Plaintiff,

vs.

SKAGIT COUNTY, a Public Corporation of the
State of Washington,

Defendant.

**Certificate of Clerk U. S. District Court to Transcript
of Record.**

United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States District Court, for the Western District of Washington, do hereby certify this typewritten record, numbered from 1 to 39, inclusive, to be a full, true, correct and complete copy of so much of the record, papers, and other proceedings in the above and foregoing entitled cause, as are necessary to the hearing of said cause on Writ of Error therein in the United States Circuit Court of Appeals for the Ninth Circuit, and as is stipulated for by counsel of record herein, as the same remain of record and on file in the office of the clerk of said District Court, and that the same constitute the record on return to said Writ of Error herein from the judgment of said United States District Court for the Western Dis-

trict of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the plaintiff in error for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit: [33]

Clerk's fee (Sec. 828, R. S. U. S.), for making record, certificate or re- turn, 73 folios at 15c.....	\$10.95
Certificate of Clerk to transcript of record, 4 folios at 15c.....	.60
Seal to said Certificate.....	.20
	<hr/>
	\$11.75

I hereby certify that the above cost for preparing and certifying record amounting to \$11.75 has been paid to me by attorneys for plaintiff in error.

I further certify that I hereto attach and herewith transmit the original writ of error and original citation issued in this cause.

IN WITNESS WHEREOF I have hereto set my hand and affixed the seal of said District Court at Seattle, in said District, this 8th day of November, 1917.

[Seal]

FRANK L. CROSBY,
Clerk U. S. District Court. [34]

*In the District Court of the United States for
the Western District of Washington, Northern
Division.*

No. 3467.

PUGET MILL COMPANY, a Corporation,
Plaintiff and Defendant in Error,
vs.

SKAGIT COUNTY, a Public Corporation of the
State of Washington,
Defendant.

Writ of Error.

United States of America,—ss.

The President of the United States, WOODROW
WILSON, to the Hon. Judge of the District
Court of the United States for the Western Dis-
trict of Washington, Northern Division, Greet-
ing:

Because in the record and proceedings, as also in
the rendition of the judgment of a plea which is in
the said District Court before you between Skagit
County, a Public Corporation of the State of Wash-
ington, Plaintiff in Error, and Puget Mill Company,
a Corporation, Defendant in Error, a manifest error
has happened to the damage of Skagit County, a
Public Corporation of the State of Washington,
plaintiff in error, as by said complaint appears, and
we being willing that error, if any hath been, should
be corrected, and full and speedy justice be done to
the parties aforesaid in this behalf, do command

you if judgment be therein given, that under your seal you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, in the State of California, where said court is sitting, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held, and the record and proceedings aforesaid being inspected, the said United States Court of Appeals may cause further to be done therein to correct the error [35] what of right, and according to the laws and customs of the United States should be done.

Witness the Hon. EDWARD DOUGLASS WHITE, Chief Justice of the United States, this the 29th day of October, A. D. 1917.

FRANK L. CROSBY,

Clerk of the United States District Court for the Western District of Washington, Northern Division.

By S. E. Leitch,
Deputy.

Allowed this the 29th day of October, A. D. 1917.

JEREMIAH NETERER,
United States Judge. [36]

[Endorsed]: Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Oct. 29, 1917. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

Service of within Pleading, after filing, accepted the 29 day of October, 1917.

HUGHES, McMEEKEN, DOVELL & RAM-SAY, and

PALMER & ASKEN,

Attorneys for Plaintiff and Defendant in Error.

[37]

*United States District Court, Western District of
Washington, Northern Division.*

No. 3467.

PUGET MILL COMPANY, a Corporation,
Plaintiff and Defendant in Error,

vs.

SKAGIT COUNTY, a Public Corporation, of the
State of Washington,
Defendant and Plaintiff in Error.

Citation on Writ of Error.

United States of America,

Western District of Washington,—ss.

To Puget Mill Company, a Corporation, GREET-
ING:

You are hereby cited and admonished to be and appear at the Circuit Court of Appeals of the United States at San Francisco, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the District Court of the United States, Western District of Washington, Northern Division, wherein Skagit County, a public corpora-

tion of the State of Washington, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable JEREMIAH NETERER, Judge of the District Court of the United States for the Western District of Washington, Northern Division, this 29 day of October, 1917.

JEREMIAH NETERER,
Judge of the District Court of the United States,
Western District of Washington, Northern Division. [38]

[Endorsed]: Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Oct. 29, 1917. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

Service of within Pleading, after filing, accepted the 29 day of October, 1917.

HUGHES, McMECKEN, DOVELL & RAM-
SAY, and
PALMER & ASKEN,
Attorneys for Plaintiff and Defendant in Error.
[39]

[Endorsed]: No. 3080. United States Circuit Court of Appeals for the Ninth Circuit. Skagit County, a Public Corporation of the State of Washington, Plaintiff in Error, vs. Puget Mill Company,

a Corporation, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

Filed November 12, 1917.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

